IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9073 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMSING JUNVED

Versus

MANAGER TOP DETECTIVES & SECURITY SERVICES PVT LTD

Appearance:

1. Special Civil Application No. 9073 of 1993

MR RV DESAI for Petitioner No. 1

MR HK ACHARYA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 18/08/2003

ORAL JUDGEMENT

Heard learned advocate Mr. R.V.Desai on behalf of the petitioner.

2. In the present petition, petitioner has challenged the award passed by the Labour Court, Ahmedabad in Reference No. 1285 of 1986 dated 26.2.1993 wherein the reference referred by the State Government has been rejected by the Labour Court, Ahmedabad.

3. In the present petition, Rule has been issued by this Court on 4.11.1993. In the present petition, the petitioner has produced the copy of the affidavit and also deposition of petitioner. Learned advocate Mr. R.V.Desai has submitted that paragraphs 5 & 6 at page 8 & 9 are to the effect that service of the petitioner was terminated on 7.5.1985 and the defence of the respondent is that if the petitioner has not come forward to obtain posting order then some inquiry must have to be necessary which has not been done and, therefore, Labour Court has committed gross error in coming to such conclusion which is contrary to record. He also submitted that the registered letter was dropped by the Union dated 28.1.1986 which is at Exhibit-21 wherein it was also specifically mentioned that as a matter of fact, petitioner has gone to collect the posting order on 27.1.1986 but he was denied the same, as a result of that petitioner was compelled to continue the proceedings pending before the Assistant Labour Commissioner at Ahmedabad. In short, his submission is that Labour Court has committed gross error in rejecting the reference. Except that no other submission has been made by the learned advocate Mr. Desai.

4. When the matter has been taken up for hearing, learned advocate Mr.H.K.Acharya not remained present and therefore matter has been taken up for hearing in his absence.

5. I have considered the submissions made by learned advocate Mr. R.V.Desai and I have also perused the entire award passed by the Labour Court. Before the Labour Court, both the parties have produced certain documents oral as well as documentary. Ultimately, the Labour Court has come to the conclusion that the respondent has issued posting order in favour of the petitioner and same was received by the petitioner but, thereafter he was not reported for work. Not only that, Labour Court has also considered that respondent was prepared to reinstate the petitioner workman. That fact was mentioned by the respondent before the Labour Court. Labour Court has also considered that posting order vide Exhibit-11/3 was produced by the respondent before the Labour Court wherein it was having the signature of the Union representative, even though the petitioner workman

was not reported for work. Witness of the respondent has made it clear that petitioner was called by the respondent to take posting order but at that time, petitioner workman has refused to receive the same and he was not prepared to work. Ultimately, the intention of the petitioner was not to resume the duty even though he received the posting order vide Exhibit 11/3 where the signature of Union representative was there. Ultimately, on the basis of the entire appreciation of the oral and documentary evidence, Labour Court has come to the conclusion that there was no termination by respondent on 7.12.1985 but infact the petitioner himself has abandoned the service and not reported for the work though he received the posting order from the respondent, therefore, ultimately, the Labour Court has rejected the reference. According to my opinion, the entire award is based upon finding of fact and clear appreciation of oral as well as documentary evidence. Labour Court has not committed any error while coming to such conclusion on the basis of appreciation. The entire appreciation is deciding the finding of fact and this Court having very limited jurisdiction under Article 227 of the Constitution of India and, therefore, this Court cannot reappreciate the same evidence and, this Court cannot act as an appellate authority. The finding given by the Labour Court is not baseless or perverse. There is no procedural irregularity committed by the Labour Court requiring any interference by this Court while exercising powers under Article 227 of the Constitution of India. Therefore, there is no substance in the present petition, present petition is accordingly dismissed. Rule is discharged.

(H.K.Rathod,J)

Jayanti*